

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily clarifies existing policy pertaining to the acquisition of certain items from domestic sources.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 67 FR 20697 on April 26, 2002, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7002-2 is amended by revising paragraph (j) introductory text to read as follows:

225.7002-2 Exceptions.

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

■ 3. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read “(MAR 2008)”; and

■ b. In paragraph (b)(5), by removing “(JAN 2007)” and adding in its place “(MAR 2008)”.

■ 4. Section 252.225-7012 is amended by revising the clause date and paragraph (c)(2) introductory text to read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

* * * * *

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (MAR 2008)

* * * * *

(c) * * *

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

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[FR Doc. E8-3946 Filed 2-29-08; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252 and Appendix F to Chapter 2

RIN 0750-AF63

Defense Federal Acquisition Regulation Supplement; Mandatory Use of Wide Area WorkFlow (DFARS Case 2006-D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the Wide Area WorkFlow electronic system for submitting and processing payment requests and receiving reports under DoD contracts. Use of Wide Area WorkFlow facilitates timely and accurate payments to DoD contractors.

DATES: Effective Date: March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0326; facsimile 703-602-7887. Please cite DFARS Case 2006-D049.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule requires use of the Wide Area WorkFlow (WAWF) electronic system for submission and processing of payment requests and receiving reports under DoD contracts. WAWF, when fully implemented, will eliminate paper documents, eliminate redundant data entry, improve data accuracy, reduce the number of lost or misplaced documents, and result in more timely payments to contractors.

DoD published a proposed rule at 72 FR 45405 on August 14, 2007. Sixteen

respondents submitted comments on the proposed rule. A discussion of the comments is provided below:

1. Recommendation To Allow Third Party Payment System (TPPS) U.S. Bank—PowerTrack Transactions

Comment: Eight respondents expressed concern that the rule would no longer support the use of TPPS, indicating that the rule fails to acknowledge the unique needs of suppliers who invoice on a transaction basis, such as those in the express and ground package delivery industry.

DoD Response: The rule has been amended to permit the use of a DoD-approved electronic third party payment system or other exempt vendor payment/invoicing system (such as PowerTrack, Transportation Financial Management System, and Cargo and Billing System) for payment of commercial transportation services.

2. Recommendation To Allow Continued Use of the Governmentwide Commercial Purchase Card

Comment: One respondent questioned the functionality of WAWF to support Government purchase card (GPC) transactions.

DoD Response: DFARS 232.7002(a)(1) exempts purchases paid for with a GPC. Therefore, the requirement to submit payment requests electronically through WAWF does not extend to GPC purchases.

3. Recommendation To Exclude Existing Foreign Military Sales Contracts

Comment: One respondent expressed concern that the rule would require modification of existing foreign military sales contracts.

DoD Response: In accordance with FAR 1.108(d), the rule is prospective in nature, becoming effective for solicitations issued on or after the effective date of the rule. It does not require modification of existing contracts.

4. Government Not Fully Compliant

Comment: Three respondents expressed concern that WAWF has not been fully implemented within DoD.

DoD Response: There are currently over 145,000 Government users of WAWF, with new users being added at the rate of 2,500 per month. All of the military departments are expanding their use of WAWF and have targets to complete deployment in fiscal year 2008. However, DoD recognizes there are instances where WAWF cannot be used, such as in a contingency environment. Paragraph (c)(2) of the clause at 252.232-7003 provides an

exception to the use of WAWF for those DoD locations that are unable to receive a payment request or provide acceptance in electronic form.

5. Acceptance Issues

a. Clarification that WAWF includes receiving reports.

Comment: One respondent recommended clarifying that WAWF also includes receipt and acceptance, not just payment requests, since receiving reports are part of the payment process.

DoD Response: The rule has been amended to clarify that the electronic submission of payment requests also includes the electronic submission of receiving report documentation necessary to support payment. Receiving reports are a key part of the payment process and have an important and close interrelationship with payment requests in WAWF.

b. Blanket exception for installations unable to provide acceptance in WAWF.

Comment: One respondent recommended a blanket exception for payments on installation support contracts where there presently is no centralized structure in place for acceptance of items or services in WAWF.

DoD Response: Paragraph (c)(2) of the clause at 252.232-7003 contains an exception to the use of WAWF for those DoD locations that are unable to provide acceptance in electronic form. However, DoD expects that use of this exception will be rare, since DoD is committed to full implementation of WAWF by the end of fiscal year 2008.

6. Recommendation for the Clause To Include Payment Instructions

Comment: One respondent recommended that the contract clause contain actual payment instructions, including fill-ins for the information required by WAWF, such as required DoDAACs and supplemental e-mail addresses for the contracting officer's representative, the procuring contracting officer, or other contract administrators.

DoD Response: The contracting office will include DoDAACs and supplemental e-mail addresses within the contract as necessary, with the exception of those for the Defense Contract Audit Agency (DCAA). The contractor should follow the instructions in WAWF to determine the appropriate DCAA office and DoDAAC.

7. Recommendation To Clarify Who Has Exception Authority (Procuring Contracting Officer (PCO) or Administrative Contracting Officer (ACO)) for Use of WAWF

Comment: One respondent recommended clarification in the contract clause and its prescription to provide authority for the PCO to grant exceptions to the use of WAWF at the time of contract formation. The determination should be included in Section G of the contract, eliminating the requirement for a copy of the ACO's determination to be provided with each payment request.

DoD Response: Prior to award, the PCO may authorize a contractor to use an electronic form other than WAWF, in accordance with DFARS 232.7003(b), and the authorization will be annotated in Section G of the contract. After award, the ACO may authorize (in writing) the contractor to submit non-electronic payment requests and receiving reports when electronic submission would be unduly burdensome to the contractor (DFARS 252.232-7003(c)(3)). The requirement for the contractor to provide a copy of the ACO's written authorization with the payment request is intended to facilitate processing of the request and prevent inadvertent rejection of the paper document.

8. WAWF System Issues

a. Credit invoices cannot process in WAWF.

Comment: One respondent suggested that, because the current workload for negative invoices requires the submission of paper invoices, the rule should provide the authority to use alternative billing arrangements when WAWF is not suitable or available.

DoD Response: The requirement to submit payment requests in electronic form does not extend to credit invoices/vouchers. WAWF was designed to comply with requirements for payments and will not be modified to accept credits. Any credits due to the Government on invoices with negative amounts should be coordinated with the Defense Finance and Accounting Service entitlement office.

b. User difficulties.

Comment: One respondent expressed concern that WAWF is not vendor-friendly for input of documents. There are too many screens, fields, and steps; DoD activities do not always input the required purchase order and modification information; and invoices are not paid any faster than when using the mail system.

DoD Response: Although WAWF input requires the use of multiple

screens and fields, the information required for payment requests remains in compliance with FAR 32.905, Payment documentation and process. Purchase order and modification information used by WAWF is extracted from the Electronic Document Access (EDA) system to populate the WAWF data screens; the information is not input to WAWF. Therefore, errors in the data pulled from the EDA system are not a limitation of WAWF, but rather an EDA issue. Further, the decrease in processing time from submission to payment is realized in WAWF's immediate transmission of a document from action step to action step.

c. Company-wide computer system revamp.

Comment: One respondent stated that it was in the middle of a company-wide computer system revamp and any changes at this time would require a 12-month lead time.

DoD Response: The rule is prospective in nature, becoming effective for solicitations issued on or after the effective date of the rule. Contractors will be expected to make the system changes necessary to comply with the provisions of new awards. However, the rule provides for the use of an alternate electronic form if authorized by the contracting officer.

d. Electronic data interchange (EDI) American National Standards Institute (ANSI) X.12 Capability.

Comment: One respondent requested a clear understanding of the EDI ANSI X.12 interfacing options with DoD.

DoD Response: It is anticipated that WAWF will support EDI ANSI X.12 into the future. No changes are being contemplated.

e. Grant and cooperative agreement processing capability.

Comment: One respondent recommended inclusion of non-acquisition instruments (grants and cooperative agreements).

DoD Response: While use of WAWF for these instruments will not be mandated, WAWF Version 3.12 (released October 21, 2007) accommodates the processing of grant payments and other transactions.

f. WAWF downtime.

Comment: One respondent expressed concern that WAWF is frequently not available.

DoD Response: Statistics maintained by the WAWF Program Office show that WAWF availability has been at 99.955 percent for peak hours and 100 percent for off-peak hours.

g. Processing of 9000 series, contract data requirements list, and first article contract line items.

Comment: One respondent stated that WAWF does not accept 9000 series, contract data requirements list, and first article contract line items, and should not be mandated until all items may be processed electronically.

DoD Response: WAWF Version 3.12, released October 21, 2007, accommodates the processing of 9000 series, contract data requirements list, and first article contract line items.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to fully automate the payment process, including receiving reports, to significantly improve the timeliness of payments and to reduce DoD's interest charges for late payments. The rule continues DoD's implementation of the electronic invoicing requirements of 10 U.S.C. 2227, as added by Section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398).

The DFARS presently identifies three accepted electronic forms of transmitting payment requests under DoD contracts: (1) American National Standards Institute (ANSI) X.12 Electronic Data Interchange (EDI); (2) Web Invoicing System (WInS); and (3) WAWF. ANSI X.12 EDI and WInS cannot process all DoD payment request types, nor can they process receiving reports. In addition, EDI and WInS information cannot be made available to all interested Government offices and organizations. WAWF is the only DoD system that can process all payment request types as well as receiving reports. WAWF keeps historical files that are readily available for both contractor and Government use. The use of WAWF already has contributed significantly to improving the timeliness of payments and to DoD's goal of reducing interest charges for late payments.

The rule will still allow a contractor to submit a payment request through an electronic means other than WAWF, or in a non-electronic format, if authorized by the contracting officer. In addition, the rule will allow contractors to submit ANSI X.12 EDI transactions through WAWF.

Approximately 1,000 small entities will be required to switch from WInS to

the WAWF system, used by over 20,000 small entities. Both systems involve submission of invoices through the World Wide Web. Approximately 1 hour is needed to learn the WAWF system. No reporting, recordkeeping, or compliance records will be required from small entities. All such records will be generated by DoD as a by-product of the use of the required system.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 232 and 252 and Appendix F to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 and Appendix F to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. The heading of subpart 232.70 is revised to read as follows:

Subpart 232.70—Electronic Submission and Processing of Payment Requests and Receiving Reports

■ 3. Section 232.7002 is amended by revising paragraph (a) introductory text, paragraph (a)(6), the last sentence of paragraph (b), paragraph (c) introductory text, and the first sentence of paragraph (c)(1) to read as follows:

232.7002 Policy.

(a) Contractors shall submit payment requests and receiving reports in electronic form, except for—

* * * * *

(6) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form; or

* * * * *

(b) * * * Scanned documents are acceptable for processing supporting documentation other than receiving reports and other forms of acceptance.

(c) When payment requests and receiving reports will not be submitted in electronic form—

(1) Payment requests and receiving reports shall be submitted by facsimile or conventional mail. * * *

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4. Sections 232.7003 and 232.7004 are revised to read as follows:

232.7003 Procedures.

(a) The accepted electronic form for submission of payment requests and receiving reports is Wide Area WorkFlow (see Web site—<https://wawf.eb.mil/>).

(b) If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request and receiving report using an electronic form other than Wide Area WorkFlow. However, with this authorization, the contractor and the contracting officer shall agree to a plan, which shall include a timeline, specifying when the contractor will transfer to Wide Area WorkFlow.

(c) For payment of commercial transportation services provided under a Government rate tender or a contract for transportation services, the use of a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System) is permitted.

232.7004 Contract clause.

Except as provided in 232.7002(a), use the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Section 252.212-7001 is amended by revising paragraph (b)(17) to read as follows:

252.212-7001 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

(17) _ 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

■ 6. Section 252.232-7003 is amended by revising the section heading, the clause title and date, and paragraphs (a)(2), (b), and (c) to read as follows:

252.232-7003 Electronic Submission of Payment Requests and Receiving Reports.

* * * * *

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (MAR 2008)

(a) * * *

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.

* * * * *

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at <https://wawf.eb.mil/>.

(c) The Contractor may submit a payment request and receiving report using other than WAWF only when—

(1) The Contracting Officer authorizes use of another electronic form. With such an authorization, the Contractor and the Contracting Officer shall agree to a plan, which shall include a timeline, specifying when the Contractor will transfer to WAWF;

(2) DoD is unable to receive a payment request or provide acceptance in electronic form;

(3) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment; or

(4) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System).

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■ 7. Section 252.246–7000 is amended by revising the clause date and paragraph (b) to read as follows:

252.246–7000 Material Inspection and Receiving Report.

* * * * *

MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)

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(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at 252.232–7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or

the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F–401, Table 1, of the Defense FAR Supplement.

Appendix F—Material Inspection and Receiving Report

■ 8. Appendix F to chapter 2 is amended in Part 3, Section F–306, by revising paragraph (a) to read as follows:

F–306 Invoice instructions.

(a) Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the Wide Area WorkFlow electronic form (see paragraph (b) of the clause at 252.232–7003) fulfills the requirement for an MIRR.

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■ 9. Appendix F to chapter 2 is amended in Part 4, Section F–401, by revising paragraph (a) to read as follows:

F–401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage. Use of the Wide Area WorkFlow electronic form satisfies the distribution requirements of this section, except for the copies required to accompany shipment.

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[FR Doc. E8–3947 Filed 2–29–08; 8:45 am]

BILLING CODE 5001–08–P